IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1230 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARATBHAI REVABHAI THAKORE - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR KL DAVE for Appellant(s) : 1,
MS.PANDIT, ADDL.PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 05/10/2007

ORAL JUDGMENT

Present appeal is preferred by the appellant challenging the legality and validity of the judgment and order of conviction and sentence passed by the learned

Additional Sessions Judge, Ahmedabad (Rural), Gandhinagar in Sessions Case No.33 of 2001, on 27th July, 2004 whereby the appellant-accused has been held guilty of the charge of offence punishable under Section 307 of the Indian Penal Code and has been sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/- and in default of making payment of fine to undergo six months rigorous imprisonment.

2. The judgment and order of conviction and sentence has been challenged on various grounds which are mentioned in memo of appeal. Mr.K.L.Dave, learned Advocate for the appellant has taken this Court through the the judgment and order under challenge, as well as, relevant part of the evidence considered by the learned trial Judge while linking the accused with the crime.

3. Mr.Dave, has narrated the prosecution case in short. It is alleged that on the date of incident, the injured-Kushkiben was proceeded towards her residential house from village side carrying agricultural wastage, popularly known as “Sathi” on her head and at that time, the accused was going on his bicycle and while overtook her, the accused brushed with the “Sathi” lying on head of the complainant and thus some hot exchange of word has taken place. It is alleged that accused had given abuses to the complainant. Thereafter, the complainant and

accused went to their home. It is also alleged that accused had after some time gone to the house of the complainant, armed with sword and tried to spear up, but as the complainant had caught hold of the said sword, she got injury on left hand finger. Thereafter, the accused had again given second blow on the forehead of the complainant, third blow on left side of the head and another blow in the middle of the head. It is also alleged that on account of screaming by the complainant, Prosecution Witness No.2-Chandrikaben rushed to the spot. The injured was taken to the Hospital and treatment was given. The investigation was conducted by the Police and sufficient evidence was found to link the accused with the crime and ultimately the accused person came to be charge-sheeted.

4. The finding of the learned trial Judge is based on evaluation on evidence mainly the complainant-Kushkiben Vinubhai, who has been examined at Exh.14 corroborating with the evidence of Prosecution Witness No.2-Chandrikaben Dineshkumar, who has been examined at Exh.18. The learned trial Judge has also considered the medical evidence in the form of Medical Officer-Mahendrabhai Harjivandas, who has been examined at Exh.24 and Dr.Jayantilal Virjibhai Satapara, who has been examined at Exh.39.

5. After going through the evidence of injured-Kuskiben and evidence of P.W.No.2, so also, the evidence of doctor who has been examined by the prosecution and in response of the query raised by the Court, Mr.Dave has fairly submitted that he may not press the present appeal so far as finding recorded by the learned trial Judge is concerned. He has also received instructions to the effect that the he is not interested in pressing the appeal against the order of conviction. The appeal was initially listed for hearing and deliberation was made by Mr.Dave on 1st October, 2007. However, it is submitted by Mr.Dave by unfolding his second part of argument that sentence imposed by the learned trial Court is unduly harsh, as such there was no atomicity between the parties. The appellant-accused was at relevant point of time young man of 22 to 23 years of age. The socioeconomic background of the complainant as well as the accused would normally be considered by the Court while imposing the substantive sentence. In number of cases, this Court as well as the Apex Court have imposed the substantive punishment of three years where the offence punishable under Section 307 of the Indian Penal Code is established. The learned trial Judge has hammered mainly on two aspects that assailant was male and victim was female and use of sword by the assailant against the complainant especially when she was unarmed is highly condemnable act and therefore severe punishment is

imposed.

5.1 It is also submitted by Mr.Dave that while imposing punishment, the impact of the punishment should be deterrent. But, each punishment should not be a deterrent punishment and imposing of substantive punishment for three years would also carry the same impact on the society and on the accused. On the contrary, by imposing more amount of fine, the learned trial Judge could have awarded some compensation out of the fine recovered. So, keeping in mind the principle of victimology, this Court should at least reduce the punishment while enhancing the amount of fine imposed and it would be proper, if some amount is ordered to be given to the victim-Kuskiben by way of compensation from the amount of fine recovered.

6. Ms.Pandit, ld. A.P.P. has submitted that seven years rigorous imprisonment appears to be harsh and it can be reduced to some extent. As per the jail report, the accused has undergone the substantive punishment of about two years and five months. So it would not be proper for the Court to say that accused may be set at liberty treating the punishment undergone as sufficient, but the accused at least should be asked to pay the more amount of fine and in that situation only the punishment can be reduced.

7. This Court has considered the submissions made by both the sides. Mr.Dave, learned Advocate has fairly submitted that any appropriate order in respect of enhancement of amount fine may be passed and appellant shall try to comply with the order. This Court is of the view that in default punishment if is inadequate then accused may not opt to pay the amount of fine, so in default punishment should be adequate to the amount of fine imposed. Keeping certain glaring facts emerging from the record, submission made by Mr.Dave is found acceptable and the facts are that;

i) the accused and the victim are basically neighbour.

ii) no untoward incident has occurred when the accused was on bail pending trial.

iii) the victim has survived after getting treatment and undergoing operation in the government hospital.

iv) there was no animosity between the parties prior to the incident and the incident appears to have occurred under the heat of excitement and on account of utterance of certain words by victim-Kushkiben.

v) at the time of incident, the age of the accused was about 22 to 23 years.

vi) there will be now scope for the Court to award

some amount of compensation to the injured keeping in mind the principle of victimology.

8. So, keeping in mind the above referred aspects and the discussions made herein above, the appeal is partly allowed. The judgment and order of conviction for the offence punishable under Section 307 of the Indian Penal Code, passed by the learned Additional Sessions Judge, Ahmedabad (Rural), Gandhinagar in Sessions Case No.33 of 2001 on 27th July, 2004, is confirmed.

8.1 However, the judgment and order of substantive sentence is hereby modified and reduced to three years from seven years by enhancing the amount of fine to Rs.35,000/- from Rs.5,000/-. Whereas, the in default punishment is hereby altered and modified to one and half years instead of six months rigorous imprisonment.

8.2 On recovery of the amount of fine of Rs.35,000/- (Rupees Thirty Five Thousand Only), the amount of Rs.30,000/- (Rupees Thirty Thousand Only) be given to the complainant-Kushkiben Vinubhai as compensation on her proper identification. If the

appellant-accused has paid the actual amount of fine of Rs.5,000/- then the same should be considered at the time of recovery of the enhanced amount of fine.

(C.K.BUCH, J.)

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